

HEATH B. FOWLER

IBLA 72-18

Decided December 12, 1972

Appeal from a decision of the Utah State Office, Bureau of Land Management (Utah 12851) rejecting application for a coal prospecting permit.

Affirmed.

Coal Leases and Permits: Generally - Oil Shale: Withdrawals -- Withdrawals and Reservations -- Effect of

An application for a coal prospecting permit is properly rejected upon a determination that the lands applied for are withdrawn by Executive Order 5327 of April 15, 1930.

Geological Survey -- Oil Shale: Withdrawals

A determination by the Geological Survey that lands contain deposits of oil shale, and are therefore withdrawn by Executive Order 5327 of April 15, 1930, will not be disturbed in the absence of a clear showing that the determination was improperly made.

Oil Shale: Withdrawals -- Withdrawals and Reservations: Temporary Withdrawals

A temporary withdrawal of lands containing oil shale deposits will continue in effect until revoked by the President or by an act of Congress.

APPEARANCES: Heath B. Fowler, pro se.

OPINION BY MR. FISHMAN

Heath B. Fowler has appealed to the Secretary of the Interior from a decision of the Utah State Office, Bureau of Land Management, dated June 16, 1971, rejecting his application for a coal prospecting permit. The application was made under the authority of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970). The Bureau rejected the application for the reason that the lands described therein were withdrawn from "lease or other disposal," pursuant to Executive Order 5327 of April 15, 1930.

Executive Order 5327 provides in pertinent part:

\* \* \* deposits of oil shale, and lands containing such deposits \* \* \* are temporarily withdrawn from lease or other disposal \* \* \*.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

In his statement of reasons on appeal, appellant argues that "there is no oil shale contained within the applied-for lands." He further contends that Executive Order 5327 was only intended to "temporarily withdraw," from lease or other disposal, lands containing deposits of oil shale. He also claims that coal prospecting permits and leases have been previously allowed on lands covered by the order subsequent to the time of its issuance.

Whether lands are withdrawn by Executive Order 5327 depends on the factual determination as to whether the lands contain deposits of oil shale. Eugene V. Simmons, A-30993 (March 3, 1969). In the case at bar, the Geological Survey has determined that the lands in issue contain deposits of oil shale. Appellant may not agree with this factual characterization; however, the only evidence he has submitted in rebuttal is a map upon which he has made sketchings to indicate that the lands in issue contain no oil shale, and general references to geological papers.

This Department has stated that, "one who attempts to disprove a classification of lands by the Geological Survey must demonstrate the error in the Geological Survey's determination and, in the absence of a clear showing of error, the Geological Survey's determination will not be disturbed." John R. Shelburne, 8 IBLA 115 (1972). We are of the opinion that appellant has failed to demonstrate any such error.

The other arguments raised by appellant were considered in John R. Shelburne, *supra*. Inasmuch as appellant prepared the statement of reasons in Shelburne as well as his own appeal, it would serve no useful purpose to entertain his remaining arguments by reiteration.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Martin Ritvo, Member

Joseph W. Goss, Member.

